

Elizabeth Halpenn, *commonly called*
Lady Lawley, *Wife of* Mark Hal- } Appellant.
penn, - - - - - }

A N D

Judith Lawley, *otherwise* Butler, }
George Bateman Lawley, *and* Ri- } Respondents.
chard Allen, - - - - - }

The Respondent Richard Allen's C A S E.

Michaelmas Term
Bill filed in the
Court of Exchequer.

Joseph Butler, Esq; (who married the Respondent *Judith*, the Appellant's Daughter) exhibited his Bill in his Majesty's Court of Exchequer at *Westminster*, in the Name of himself and his said Wife, and of the said *George Bateman Lawley*, an Infant, by Sir *Robert Lawley* and the said *Joseph Butler*, his Guardians and Trustees, against the Appellant, and *Mark Halpenn* her Husband, setting forth the Wills of Doctor *Bateman* and Sir *Thomas Lawley*; and that the Appellant had possessed their real and personal Estates to a very great Value; and that, in order to make a reasonable Provision for the said *Judith* her Daughter, according to the said Wills, and the Trusts therein contained, the Appellant had executed an Indenture, dated the 30th of *June* 1732, and made between *Mark Halpenn* and the Appellant his Wife of the one Part, and the said *Joseph Butler* of the other Part; whereby the Appellant bargained and sold (amongst other Things) one House in *Litchfield-street* in the County of *Middlesex*, then in the Occupation of *John Tinte*, to the said *Joseph Butler* and his Assigns; and that the Appellant, to defeat the said *Joseph Butler* and his Wife of the Benefit of the said Deed, refused to deliver up to the said *Joseph Butler* the Deeds and Writings concerning the said House, whereby the said *Butler* and his Wife were disabled to receive the Rents of the said House; and to compel the Tenant thereof to pay the same; and to oblige the Tenant to keep the said House in Repair, which, for want thereof, was then in a ruinous Condition, and ready to tumble down; and praying a Discovery of the Estates of Doctor *Bateman* and Sir *Thomas Lawley*; and that the Trusts in their Wills might be carried into Execution for the Benefit of the Appellant's Children; and that *Mark Halpenn* might be compelled to execute the said Indenture; and that the Deeds and Writings relating to the said House might be delivered up by the Appellant.

Appellant's Answer.

To which Bill the Appellant, in or about *Trinity* Term following, put in her separate Answer, and thereby admitted the Wills of Doctor *Bateman* and Sir *Thomas Lawley*, and that she had possessed herself of their real and personal Estates; and Said, That she executed the Indenture of the 30th of *June* 1732, for no other Purpose than for the Benefit of herself, that she might thereby raise Money for her own Use: But admitted, that afterwards, of her own Accord, she consented, that the said House should be made a Settlement for her said Daughter, in Trust for her separate Use; and she also admitted, that she refused to deliver the Deeds and Writings relating to the said House to Mr. *Butler*; and that she believed there was an Arrear of Ground-Rent due for the same; and that it was in a ruinous Condition, and likely to tumble down, the said *Butler* refusing to suffer the Appellant to lett the same.

May 1737, Order
Court of Exche-
quer for the Deputy
to enquire what Repairs
were necessary to be done
in the House in *Litch-*
field-street.

After the putting in of this Answer, upon the Application of Mr. *Butler* and his Wife, the Court of Exchequer taking it into Consideration, that it would be for the Benefit of the Parties, and Security of the said House, whether it should be determined to belong to Mr. *Butler* and his Wife, or to the Appellant, that the Arrears of Ground-Rent should be paid, and the House put in Repair, did, on the 6th of *May* 1737, on the Motion of the Plaintiffs in the Cause, Order, That it should be referred to the Deputy-Remembrancer of that Court to consider and report, what was due for the Ground-Rent of the House in *Litchfield-street*, and also what Sum of Money was necessary to be laid out in repairing the said House; and that Mr. *Basset*, the Receiver of Part of the Estate in question, should forthwith pass his Accounts, and bring the Balance in his Hands into Court; and that the said Deputy, out of such Balance, should pay the Ground-Rent for that House, and also for the Repairs thereof.

After making this Order, the Respondent delivered to the said Deputy an Estimate of what was necessary to be laid out in repairing the said House, verified upon Oath.

In July 1737, the
Deputy's Report, that
it was necessary to be
laid out in repairing the
House.

And on the 5th of *July* 1737, the said Deputy-Remembrancer made his Report, whereby he certified, that he had been attended by the Solicitors and Clerks in Court for the Plaintiff *Butler*, and the Defendant *Lady Lawley* (the now Appellant); and found, that there was due for the Ground-Rent of the said House the Sum of 20 *l.* by the Admission of both the said Parties; and that he further found, by the Affidavit of the now Respondent *Richard Allen*, that 95 *l.* would be necessary to be laid out in repairing the said House for the Term of 16 Years, being the Remainder of the Term then to come therein, as by an Estimate made by the

6th July 1737, the said Report was confirmed.

the said *Richard Allen*, annexed to his Affidavit, appeared: Which Report, on the 6th of the same *July*, was confirmed by the said Court, without any Opposition or Objection made thereto by the Appellant.

The Key of the House delivered to the Respondent, in Presence of the Deputy and the Appellant's Solicitor.

The Repairs done by the Respondent.

Soon after the confirming the said Report, the said *Joseph Butler* and Mr. *Holmes* (the Appellant's Solicitor) and the Respondent, attended the said Deputy, when Mr. *Butler*, in the Presence of the Deputy and Mr. *Holmes*, delivered to the Respondent the Key of the said House, in order for him to do the Repairs thereof. And the Respondent believing, that the said Orders and Report, and the Delivery of the said Key to him in the Manner aforesaid, was a sufficient Authority, he entered upon, and performed the Repairs of the said House, as proposed by the said Estimate, and also some other necessary Repairs, which could not be foreseen to be so much wanting as they proved to be, amounting to about 14 *l.* more, in all to 109 *l.* or thereabouts.

About 3d Nov. 1737, the Appellant took Possession of the House, and refused to let the Repairs be measured and valued.

The Appellant frequently viewed the said Work when doing, and did not forbid the Respondent's proceeding therein; and, so soon as the Repairs of the said House were completed, the Appellant, about the 3d of *November* 1737, under Pretence of shewing the said House in order to lett the same, procured one *Dunn*, a Cornchandler in *Litchfield-street*, (with whom the Respondent usually left the Key of the outward Door) to deliver to her the said Key; ever since which Time the Appellant hath kept the Possession of the said House, and now dwells therein. By means whereof the Respondent was unable to have the Repairs surveyed and measured, in order to be laid before the said Deputy, notwithstanding the Respondent frequently requested the Key of the Appellant for that Purpose, and that she would appoint some Person to see the Work surveyed, measured and valued; but the Appellant refused the same.

28 Nov. 1737, Order of Reference to the Deputy, to examine whether the Respondent had performed the Work.

On the 28th of *November* 1737, the Respondent applied to the Court of Exchequer, and laid before them the Hardship of his Case, That he had, at his own Charge, completed and paid for the Repairs of the said House; and prayed, that he might be paid for the same: When, upon hearing the Appellant's Council, it was Ordered, That it should be referred to the Deputy-Remembrancer to examine and report, Whether the Respondent had performed the said Work, and by whom he was appointed to do it, and what he deserved to have for the said Work.

The Appellant refus'd to permit the Surveyors to measure and value the Work.

The Appellant was duly served with the said Order, and the Deputy appointed Persons to survey, measure and value the said Work, that he might report to the Court how much the Respondent deserved for the same; and several Days were appointed from time to time by the said Deputy in Writing, with the Names of the Surveyors; and notwithstanding the Appellant was duly served with such several Appointments, the Appellant refused to let the Respondent and the Surveyors into the said House; by which a great deal of Time was lost, and the Respondent prevented from receiving what was due to him.

1st Feb. 1737, Order for the Appellant to shew Cause, why an Attachment should not issue against her, for disobeying the Order of 28th Nov.

On the 1st of *February* 1737, the Court Ordered, That the Appellant should shew Cause, why an Attachment should not issue against her, for disobeying the said Order of the 28th of *November*, in not permitting the several Persons appointed and approved of by the Deputy to view and inspect the said Work.

13 Feb. 1737, Order for the Deputy to appoint a short Day for Surveying the Work, and for the Appellant to open the House.

On the 13th of *February* 1737, upon hearing Council for the Appellant and the Respondent, the Court Ordered, That the Deputy-Remembrancer should appoint a short Day for proper Persons to attend and inspect the said House; and that the Appellant should cause some Person to attend on that Day to open and shew the same to them.

This Order, under the Seal of the Court, with an Indorsement on the Back thereof, signed by the Deputy the 16th of the same *February*, whereby he appointed *Saturday* Morning then next, at Ten of the Clock, for the Surveyors to attend and inspect the said Repairs, and what the Respondent deserved for the same, was served on the Appellant; but she did not obey the same, notwithstanding the Surveyors, approved of by the Deputy, attended at the Time appointed, and for many Hours after, to the great Expence of the Respondent; they insisting to be paid for their Time.

22d Feb. 1737, Order by Consent, made at the Appellant's Instance, for inspecting the House the next Morning.

On the 22d of the same *February*, on the Respondent's Motion for an Attachment against the Appellant for her Contempt, and hearing her Counsel, who proposed, That the Appellant and her Agents, should peremptorily attend the next Morning at Ten of the Clock, to shew the said House; IT WAS ORDERED BY CONSENT, That the House should be inspected the Morrow Morning at Ten o' Clock by the Respondent and his Agents, or Workmen; and that the Appellant should then cause some Person to attend to shew the said House.

On the 23d of the same *February*, according to the last Order by Consent, a Person attended with the Appellant, who open'd the Door of the said House, and shewed the said Work, which was then in Part measured and valued by the Persons appointed by the Deputy; but the same, through the Appellant's Delays, could not be finished till late the next Day.

25 Feb. 1737, Order for the Deputy-Remembrancer to pay the Respondent 50 *l.* and the Appellant to shew Cause, why she should not pay the Costs of the several Applications.

On the 25th of the same *February*, on the Respondent's Motion, setting forth the many Practices of the Appellant, whereby the measuring the said Work had been prevented; and as the Court would not sit after that Day, so that it was impossible for the Respondent to procure the Deputy's Report before the then next Term, and the Hardship of the Respondent's Case, to be kept so long out of his Money; and reading the Affidavits of the Surveyors, whereby the Work was valued at 108 *l.* 9 *s.* 8 *d.* the Court were pleased to Order, That the Deputy should pay to the Respondent 50 *l.* on Account, out of the Money in Court, towards the said Work performed by the Respondent; and that she should

should shew Cause the first Day of the then next Term, why she should not pay the Costs of his several Applications to the Court on that account.

But before the first Day of the then next Term, and before the Respondent could procure the Deputy's Report, or receive any Part of the 50*l.* the Appellant appealed to your Lordships from the said Orders of the 6th of *May*, 28th of *November*, and 25th of *February* 1737, without taking any notice of the said Orders of the 1st, 13th, and 22d of *February* 1737: But the Respondent humbly hopes, that the said Orders are just (amongst others) for the following REASONS:

R E A S O N S.

REASONS.

- I. For that the said Order of the 6th of *May*, was made as well for the Benefit of the Parties, as for the Safety and Security of the said House, to prevent the Ground-Landlord from taking Possession for Non-payment of the Ground-Rent; and also, to prevent the House from falling for want of Repairs, which by her Answer she admitted was ready to tumble down, and the Appellant has had the Benefit of such Repairs, by living in the House, which before was not habitable.
- II. The Appellant frequently viewed and observed the said Work, when doing by the Respondent, and so did her Solicitor Mr. *Holmes*, who gave Directions for some Alterations in the Work, which were done accordingly; but neither of them forbid the Respondent from proceeding therein.
- III. The Words in the Order of the 28th of *November*, to examine and report by whom the Respondent was appointed to do the said Work, were inserted at the Request of the Appellant's Counsel, and in her Favour, upon a Suggestion that the Respondent was employed to repair the said House by Mr. *Butler*; but the Appellant knowing there was no Colour for such Suggestion, did not apply to the Deputy for any Report concerning the same. And in case the Appellant had any real Objection to the said Order, the Respondent humbly apprehends she hath waived the same by the Order of the 22d of *February* 1737 (against which she hath not appealed); whereby she submits to pay Obedience to the Order of the 28th of *November*, and consented, That a Person should attend on her Behalf the then next Morning, to open the said House, and shew the said Work, and who, together with the Appellant, attended accordingly.
- IV. The Appellant, in her Petition of Appeal, takes notice, That when the Order of the 28th of *November* was made, the Suit was abated by the Death of Mr. *Butler*; but the Respondent begs leave to observe, that he is not a Party to the said Suit, neither is he the Representative of Mr. *Butler*, or a Creditor of his, and consequently it was not in his Power to Revive; and if no such Order as that of the 28th of *November* could have been made till such Suit had been Revived, the Respondent must have lost his Money, and been remediless; for (by the Management of the Appellant with her Daughter *Butler*, who lives with her) such Suit is not Revived, and in all probability never will be.
- V. The Appellant has not appealed from the Order of the 6th of *July*, by which the Deputy's Report, made pursuant to the Order of the 6th of *May*, is confirmed: And it is humbly submitted, whether the said Report, so confirmed, will not remain in full Force to be observed by all the Parties thereto.

WHEREFORE, and for divers other Reasons, the Respondent humbly hopes, that the several Orders appealed against will be Affirmed, and the Appeal Dismissed with Costs.

FRAN. CHUTE.
PAUL FOLEY.

Elizabeth Halpenn, *commonly called* }
Lady Lawley, *Wife of Mark* } Appellant.
Halpenn, - - -

A N D

Judith Lawley, *otherwise* Butler, }
George Bateman Lawley, *and* } Respondents.
Richard Allen, - - -

The Respondent Richard Allen's CASE.

*To be Heard at the Bar of the HOUSE OF LORDS, ON
Wednesday the 7th Day of February, 1738.*